

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of

Petitions for Declaratory Ruling Regarding Public,  
Educational, and Governmental Programming

MB Docket No. 09-13  
CSR-8126, CSR-8127, CSR-8128

**COMMENTS OF THE CITY OF DEARBORN, MICHIGAN; THE CHARTER  
TOWNSHIP OF MERIDIAN, MICHIGAN; THE CHARTER TOWNSHIP OF  
BLOOMFIELD, MICHIGAN; THE MICHIGAN COALITION TO PROTECT PUBLIC  
RIGHTS OF WAY; THE MICHIGAN TOWNSHIPS ASSOCIATION; AND THE  
MICHIGAN MUNICIPAL LEAGUE**

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March 9, 2009

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## **EXHIBITS**

- Exhibit A: Declaration of Deborah Guthrie
- Exhibit B: Declaration of Leslie Helwig
- Exhibit C: Affidavit of Sharon Gillette
- Exhibit D: Declaration of John B. O'Reilly, Jr.
- Exhibit E: Declaration of William C. Mathewson

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RIGHTS OF WAY; THE MICHIGAN TOWNSHIPS ASSOCIATION; AND THE  
MICHIGAN MUNICIPAL LEAGUE**

The City of Dearborn, Michigan, the Charter Township of Meridian, Michigan, and the Charter Township of Bloomfield, Michigan (collectively, the “Michigan Communities”),<sup>1</sup> joined by the Michigan Coalition to Protect Public Rights of Way (“PROTEC”),<sup>2</sup> the Michigan Townships Association (“MTA”),<sup>3</sup> and the Michigan Municipal League (“MML”),<sup>4</sup> submit these comments in response to the Media Bureau’s request for comments released February 6, 2009.

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<sup>1</sup> The City of Dearborn, Meridian Township, Bloomfield Township and the City of Warren are the Petitioners in CSR-8128.

<sup>2</sup> PROTEC is an organization of Michigan cities interested in protecting their citizens' governance and control over public rights-of-way, and their right to receive reasonable compensation from the utilities that use public property.

<sup>3</sup> The Michigan Townships Association promotes the interests of 1,242 townships by fostering strong, vibrant communities; advocating legislation to meet 21st century challenges; developing knowledgeable township officials and enthusiastic supporters of township government; and encouraging ethical practices of elected officials who uphold the traditions and unique characteristics of township government and the values of the people of Michigan.

<sup>4</sup> The Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of local government and administration through cooperative effort. Its membership is comprised of some 521 Michigan local governments.

The Michigan Communities filed a Petition for Declaratory Ruling in this matter on December 9, 2008 (the “Petition”). In these comments, the Michigan Communities will not revisit the substantive arguments made therein, but will instead focus on two basic points. First, we supplement the Petition by explaining why so many Michigan communities were and remain concerned about the Comcast’s plan to digitalize PEG channels, while continuing to carry the primary signals from broadcasters in an analog format. Second, for purposes of our proceeding, but also as comment in CSR-8126 and 8127, we discuss the letter of Monica Shah Desai, dated January 18, 2009, which summarized the Media Bureau’s recommendations with respect to our Petition. The MML, MTA, and PROTEC join in these comments to support the petition filed by the Michigan Communities, and to show that many Michigan local communities are concerned about Comcast’s treatment of PEG channels.<sup>5</sup>

**I. THE PROPOSED COMCAST CHANGE – AND THE CHANGE PROPOSED BY OTHER OPERATORS – THREATENS TO SIGNIFICANTLY HARM PEG AND THE INDIVIDUALS AND INSTITUTIONS THAT RELY ON IT.**

**A. Comcast’s Digitalization Places Unique Burdens on PEG Channels and Subscribers Who Wish to View These Channels.**

Comcast’s digitalization places unique burdens on PEG channels and subscribers who wish to view them. In other settings, when a customer orders a service from Comcast, Comcast routinely provides the customer with the equipment necessary to view that service. Declaration of Deborah Guthrie (“Guthrie Declaration”) ¶ 7. However, Comcast chose a very different approach with respect to PEG channels. Under Comcast’s approach, an analog subscriber who ordered basic or expanded basic service would not receive PEG channels unless the subscriber made an affirmative request for a converter box. *Id.* Comcast refused to agree to provide every

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<sup>5</sup> MML will be filing additional comments in CSR-8126 and CSR-8127 with respect to the AT&T PEG platform.

subscriber a converter box automatically. *Id.* The company also refused to tell consumers that without a converter box, they could not receive all the channels for which they had paid. *Id.* Comcast even turned many requests for converter boxes into an opportunity to sell the customers additional levels of service. *Id.*; Declaration of Leslie Helwig (“Helwig Declaration”) ¶ 6. Some subscribers reported that when they called to ask for a converter box, they were told that they would be charged for the box, even when Comcast had indicated otherwise. Helwig Declaration ¶ 6. To pick up the box, many subscribers were then told they needed to drive to a service center in a different city. *Id.* Subscribers then had to install the box themselves, or pay Comcast \$17.00 to deliver it. *Id.*

Thus, Comcast’s change results in two very different consumer experiences. For a subscriber to view broadcast channels on the basic service tier which continue to be carried in an analog format, a subscriber simply has to order basic cable service. But for a subscriber to view PEG channels, the subscriber must order basic service, then: (a) *know* that additional equipment is required to receive the PEG channels; (b) *affirmatively* request that equipment; (c) often endure a sales pitch; and (d) obtain and install the additional equipment, at additional cost. As we and others have explained, this unique burdening of PEG both defies Congress’s basic understanding of PEG channels, and ignores a cable operator’s duty to “provide its subscribers . . . a separately available basic [category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator.]”. 47 U.S.C. § 543(b)(7) (inserting the definition of “service tier” from 47 U.S.C. § 522(17)).

**B. The Actual Effects of Comcast’s Approach Are Well-Documented.**

The Michigan Communities quickly became aware that Comcast’s digitalization of PEG channels, but not other channels on the basic service tier, would uniquely burden PEG channels.

Sharon Gillette, who filed an affidavit in the litigation, was one subscriber burdened by Comcast's change.<sup>6</sup> Although Ms. Gillette had analog televisions and no digital converter box, Comcast informed her that she would need to rent such boxes for each television on which she would like to receive the PEG channels. Gillette Affidavit ¶¶ 4-5. She explained that her grandchildren attend Haslett School District, and that she watches their events on television. *Id.* ¶ 7. But Ms. Gillette is not only deprived of the ability to share in the educational experiences of her grandchildren. She also considers her government access channels to be "very important." *Id.* ¶ 8. Ms. Gillette uses the channels to monitor township meetings and comes away "impressed with the amount of and the importance of the decision making process by local government." *Id.* This is not surprising. Transparency and openness are the hallmarks of government access channels, and they serve important public benefits. By depriving Ms. Gillette and others of the ability to view PEG channels, Comcast's change would undermine these and other important benefits.

The Michigan Communities received a number of complaints from citizens and community institutions. Dearborn residents called the City to complain about the proposal because they were concerned that they would have to pay more for converter box rentals just to watch PEG programming. Declaration of John B. O'Reilly, Jr. ("O'Reilly Declaration") ¶ 9.<sup>7</sup> Meridian Township was informed that many local programs depend on volunteer producers, who will be discouraged to produce such programming if it is not made widely available.<sup>8</sup> Indeed,

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<sup>6</sup> See Affidavit of Sharon Gillette, filed in *Charter Twp. of Mich. v. Comcast of Mich. III, Inc.* (Jan. 10, 2008) ("Gillette Affidavit"), attached hereto as Exhibit C.

<sup>7</sup> The City of Dearborn was especially concerned about the impact of higher prices on senior citizens and low income residents. O'Reilly Declaration ¶ 9. The City also had grave concerns about the ability of residents to find CDTV in emergency situations. *Id.*

<sup>8</sup> Affidavit of Deborah Guthrie, filed in *Charter Twp. of Mich. v. Comcast of Mich. III, Inc.* (Jan. 10, 2008), Attachment A to Guthrie Declaration ("Guthrie Affidavit") ¶ 10.

student producers at a local high school explained that the proposed move would harm ongoing academic programs that rely on the educational access channel. Guthrie Affidavit, ¶ 10; *see also* O'Reilly Declaration ¶ 9.<sup>9</sup>

Comcast's proposed digitization makes PEG channels difficult for subscribers to find at all. In preparation for the switch to all-digital carriage, Comcast began providing Michigan PEG channels in both analog and digital format on or about December 2007, and continued to do so through at least the hearing on its motion to dismiss the complaint of the Michigan Communities in Fall of 2008. During that period, Meridian Township repeatedly attempted to find the channels on a television with a QAM tuner. Guthrie Declaration ¶ 6. The channels showed up nowhere near the 900-series channels on which they would appear on a converter. Guthrie Affidavit ¶ 9. The Township found it difficult to locate the channels, and noticed that the channel location on a QAM tuner changed from time to time (apparently as Comcast changed frequencies on which the PEG channels were provided). Guthrie Declaration ¶ 6. The Township was only able to find HOM-TV on a digital channel one time. *Id.* The change thus did not merely make it more difficult to surf to the PEG channels. Even for consumers with advanced television sets, the effect was to make the PEG channels difficult to find at all.

The harms are not limited to Comcast systems. Perhaps not surprisingly, other operators in the state planned to adopt a similar approach. Declaration of William C. Mathewson, ¶ 4. Michigan communities have expressed concern that after such a change they will not be able to convey important public information to as many people as possible. *Id.* ¶ 3. The proposed change resulted in wide, and largely negative coverage in the local press, as residents and users

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<sup>9</sup> A report to the Meridian Cable Commission showing testimony of affected students is available at: [http://meridian.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=1119](http://meridian.granicus.com/MediaPlayer.php?view_id=2&clip_id=1119)

complained that the digitalization of PEG channels would make local programming inaccessible for many. *See* Guthrie Declaration, Attachment B (newspaper articles).

None of this should be surprising to the Commission. The digitalization of the PEG channels presents many of the same problems for consumers that are presented by the DTV transition – with the additional complication that operators have been advising customers that cable subscribers will not be affected by the digital transition. The PEG digitalization has been implemented in a way that clearly limited, and was designed to discourage, access to PEG programming, and that would have precisely that effect.

## **II. THE MEDIA BUREAU’S SUMMARY OF ITS RECOMMENDATION CORRECTLY CONCLUDES THAT DISCRIMINATION AGAINST PEG CHANNELS IS INCONSISTENT WITH THE CABLE ACT.**

On January 18, 2009, Monica Shah Desai, Chief of the Media Bureau, released a letter summarizing the Bureau’s recommendations to the Commission. That letter states that “[I]f a provider chooses to convert PEG channels,<sup>10</sup> it must convert the entire basic service tier, whether or not the system is subject to effective competition.” The Media Bureau’s letter is consistent with testimony the FCC presented to Congress, which stressed that “the purpose of the basic service tier” would be defeated if consumers were “[s]ubject[ ] . . . to additional burdens to watch their PEG channels.” Testimony of Monica Shah Desai, *Public, Educational, and Governmental (PEG) Access to Cable Television Before the House Subcomm. on Financial Services and General Government* (September 17, 2008).

These broad statements have implications for CSR-8128, as well as CSR-8126 and 8127. Certainly, the Congressional testimony related to both Comcast’s digitalization of PEG channels,

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<sup>10</sup> We believe that in this hypothetical, Ms. Desai assumes that the operator carries PEG channels in only one format, a digital format. If an operator carried PEG in analog form as well, the arrangement would not be objectionable.



and AT&T's Channel 99 platform. However, the Petition in CSR-8128 differs from the AT&T petitions. In CSR-8128, the Commission was asked to address seven specific questions in order to assist a district court in resolving pending litigation. Broadly speaking, those questions boil down to (a) whether a cable operator is required to provide a basic service tier that includes PEG channels; (b) whether it is an evasion of the obligation, within the meaning of 47 U.S.C. § 543(h) and associated regulations, or a direct violation of that obligation to offer PEG channels in a manner that, from a consumer point of view, makes them a separate category of service; and (c) whether Comcast's digitalization of the channels, coupled with the fact that subscribers would, *inter alia*, be required to affirmatively request equipment needed to receive the channels, be required to go through a special installation process; and pay extra in order to view the channels rendered them a separate category of service. *See, supra*, Part I.A. While the Petition points out that Comcast is discriminating against the PEG channels, the technical question raised is whether the discriminatory treatment creates an evasion or violation of the obligation to provide PEG on the basic service tier.<sup>11</sup> As the Petition makes clear, in light of the status of the case, the Court did not directly refer questions as to whether the Cable Act more generally prohibits discrimination against PEG channels.

Hence, it is not necessary to adopt the Media Bureau's recommendation, read most broadly, in order to grant the Michigan Communities' Petition, or to answer the questions raised by the district court in the manner proposed by the Michigan Communities.

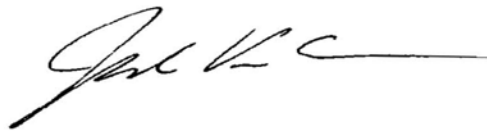
Nonetheless, we emphasize that the Media Bureau's reading of the Cable Act as set forth in the Desai letter is correct, particularly on the facts of this case, where the company proposal would have necessarily imposed continuing burdens on the receipt and use of PEG channels (as

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<sup>11</sup> This requires the Commission to interpret the meaning of 47 U.S.C. § 522 (17), which defines "service tier."

discussed above, the operator never proposed a solution that would have rendered the digitalization moot in other ways). The Cable Act contemplates a single basic service tier consisting of “all signals carried in fulfillment of the requirements of sections 614 and 615” and “[a]ny public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers.” 47 U.S.C. § 543(b)(7). It follows from that and other provisions of the Act, as discussed in detail in the comments of Montgomery County, Maryland, that a cable operator may not make PEG programming more difficult for a consumer to view than other programming on that tier.

Respectfully submitted,



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March 9, 2009

## **EXHIBIT A**

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

In the Matter of

Petitions for Declaratory Ruling Regarding  
Public, Educational, and Governmental  
Programming

MB Docket No. 09-13  
CSR-8128

**DECLARATION OF DEBORAH GUTHRIE**

I, Deborah Guthrie, declare as follows:

1. I submit this declaration under penalty of perjury in response to the notice issued in the above-captioned proceeding.

2. I am Cable Coordinator for the Charter Township of Meridian. I reside at 3979 Dayspring Ct., Okemos, MI 48864. My telephone number is (517) 214-1530.

3. I previously submitted an affidavit and testified in *City of Dearborn v. Comcast of Michigan*, No. 08-10156. The transcript of my testimony was contained in Exh. C of the Petition filed with the Commission in CSR-8128. The affidavit is Attachment A to this Declaration, and I reaffirm that it was accurate as of the date signed.

4. I submit these additional declarations to advise the Commission of developments since January, 2008, when the affidavit was prepared, and to provide additional information regarding that affidavit.

5. I mention in the affidavit that there was substantial community opposition to the proposed digitization of PEG channels, and that program producers believed that the change would reduce the audience available to PEG programmers. A hearing was held in Meridian Township regarding the digitization, at which several students explained why the digitization of

the PEG channels would in fact discourage the production and availability of local programming. Similar testimony by their instructor was provided to the federal court, also contained in exh. C to the Petition filed with the Commission in CSR-8128.

6. In January, 2008, and for some period thereafter, Comcast carried the PEG channels in both an analog and a digital format. This complied with the temporary restraining order issued by the Court, while leaving Comcast in a position to provide PEG only in a digital format should the Court lift that order. My employees, at my direction, repeatedly attempted to view the PEG channels using a television with a QAM tuner (according to Comcast, a consumer with a television with a QAM tuner would be able to view PEG channels without a converter). The initial tests are described in paragraph 9 of my affidavit, but we regularly retested through October of 2008. In every test, it was difficult to find the PEG channels without a converter (in some cases we were unable to find them), and we found that the apparent channel location changed from one test to another. In fact, only once in all the times we tested, was HOM-TV found on a digital channel.

7. As our dispute with Comcast progressed, it became very clear that its proposal had a clear constant: a subscriber who wished to receive only basic or expanded basic service (both of which were analog services on the Comcast system) would *lose* the PEG channels unless the subscriber made an affirmative request to continue to receive them, by requesting a converter box. This was true both for existing subscribers but also for new subscribers. Comcast consistently refused to agree to provide every subscriber a converter box automatically, even though it routinely provides customers the equipment necessary to receive other services that they offer. Comcast also refused to tell new subscribers that a converter box would be required to receive all the services for which they were paying as part of the basic service and expanded

basic service packages. Moreover, for expanded basic customers, Comcast insisted that it be permitted to use a request for a converter box to receive PEG as an opportunity to sell additional services to subscribers. Thus, subscribers would have had to make affirmative requests to receive PEG, and would have had to navigate through a variety of sales pitches in order to receive the PEG channels.

8. HOM-TV received several calls from residents stating their complaints about Comcast moving the PEG channels to the digital tier. I have dozens of local, state, and national newspaper articles evidencing the importance of the matter, and have attached three such articles to this declaration. See Attachment B.

9. To view examples of government programming for the community visit [www.homtv.net](http://www.homtv.net).

10. I declare under penalty of perjury that the foregoing is true and correct.

This declaration was executed on the 9<sup>th</sup> day of March, 2009, at the Charter Township of Meridian, Michigan.

  
DEBORAH GUTHRIE

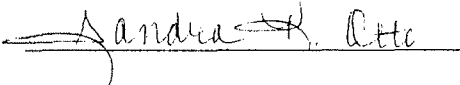
State of Michigan

County of Ingham

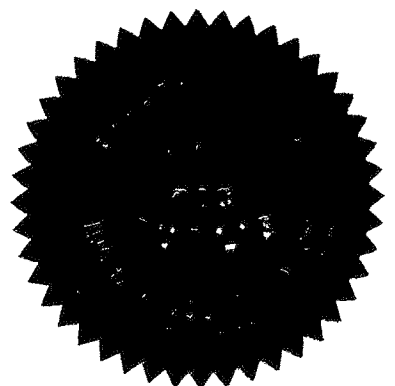
(Acting in Ingham)

Subscribed and sworn to (or affirmed) before me this 9<sup>th</sup> day of March 20 09

SANDRA K. OTTO  
NOTARY PUBLIC - STATE OF MICHIGAN  
COUNTY OF INGHAM  
My Commission Expires Oct. 1, 2010  
Acting in the County of Ingham

  
Notary Public

My commission expires Oct. 1, 2010



**EXHIBIT A, Attachment A**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CHARTER TOWNSHIP OF MERIDIAN,  
a Municipal corporation, and  
CITY OF DEARBORN,  
a Municipal corporation, and  
SHARON GILLETTE, an individual

Case No.: \_\_\_\_\_

Hon. \_\_\_\_\_  
Magistrate \_\_\_\_\_

Plaintiffs,

v.

COMCAST OF MICHIGAN III, INC.,  
a Delaware corporation, et al.,

Defendants.

**AFFIDAVIT OF DEBORAH GUTHRIE**

STATE OF MICHIGAN     )  
                                      )SS  
COUNTY OF INGHAM     )

I, DEBORAH GUTHRIE, being first duly sworn, deposes and states that:

1. I am Cable Coordinator for the Charter Township of Meridian. I reside at 3979 Dayspring Ct., Okemos, MI 48864. My telephone number is (517) 332-3799.

2. I have worked in the television industry for 12 years from a camera grip to reporter to producer to Production Manager to Intern Coordinator. As Cable Coordinator for the Township, I am responsible for directing and overseeing the operations of HOM-TV Channel 21, the government access channel for Meridian Township. I am also responsible for providing staff



assistance to the Cable Communications Commission and I serve as a liaison between the cable company and the Commission. The Commission, among other things, is responsible for reviewing the performance of cable operators in the community and making recommendations to the governing body of the Township with respect to enforcement of franchise obligations. I am also responsible for receiving and investigating complaints regarding cable in Meridian Township.

2. I have been Cable Coordinator since January, 2007, and have worked in various capacities for HOM-TV Channel 21 since 1996.

3. I have separately reviewed and verified the factual statements in the Complaint against Comcast of Michigan III, Inc. with respect to Meridian Township and I will not repeat those statements in this affidavit. This affidavit will provide additional information about HOM-TV Channel 21 and some of the work we have performed and information we have received since the announcement that Comcast would cease providing the access channels at their current location, shift those channels to digital only (so that they cannot be received by a common, cable-ready analog television), and identify PEG programming as being carried on what Comcast describes as the 900-series of channels on the cable system.

4. HOM-TV Channel 21 has received several national, regional, and local awards for its programming, including 23 first place national awards for overall excellence in government programming, election coverage, local news, and specialty programs as recognized by NATOA and ACM. It was most recently awarded a national award for its coverage of local election debates. Without our coverage of such local debates, it is unlikely that the debates would be televised. Hence, our HOM-TV Channel 21 provides a very valuable way for citizens

of all ages and income levels to participate in the electoral process. This coverage will of course be of particular importance during this year.

5. This sort of coverage is typical of our channel. The goals of HOM-TV Channel 21 are to:

- provide citizens increased access to Township meetings through live and recorded television programming available on Comcast cable channel 21 (the channel is also available on the Internet via video streaming on the Township Web page, but viewing this video requires high speed Internet access);
- cablecast live or taped programs for at least eight hours per day, seven days per week;
- increase information that is available to the Township electorate about political issues, candidates and elections;
- produce and transmit other informative television programs of interest and value, not provided or available by other sources, which may improve the quality of community life and viewership of the cable channel;
- make available opportunities for citizen involvement and interaction; and
- maintain high standards of professionalism and quality programming.

6. Consistent with these goals, Channel 21 is programmed with a mix of original taped, live and repeat programming, along with a community information bulletin board. The community bulletin board was recently discussed by the board as an avenue for them to send

public notices rather than the expensive cost of print media. The bulletin board posts information about road closures, flooding, water main breaks, canceled meetings, etc. The channel is heavily programmed. In the last quarter of 2007, for example, we produced 110 new original programs, and in addition covered meetings of the Township Board, the Zoning Commission, the Planning Commission, the Environmental Commission and the Parks Commission. That number of original programs will double as the average high election season produces approximately 50 additional programs.

7. Channel identity and accessibility are very important to us because we do not have the promotional budget of a broadcast station, and because detailed information about the programming we are carrying does not appear in programming guides. For that reason, and others, the current channel location is very important to us.

8. It would be inconsistent with our goals and the township boards goals and it would substantially hamper our ability to communicate if subscribers must pay additional fees or charges in order to receive HOM-TV Channel 21 programming, or if it is difficult to find HOM-TV Channel 21 programming by channel surfing. Comcast's actions would have both of these results. I say this based on my experience in the field, but also based on complaints that we have received regarding Comcast's plan to deliver HOM-TV Channel 21 only in digital and in what Comcast identifies as channel 915. The impact would be immediate.

9. To determine how difficult it would be for a consumer to find HOM-TV Channel 21, I recently directed my staff to perform a test. According to Comcast, a consumer with a digital television with a QAM tuner should be able to view HOM-TV Channel 21 without a converter. Also according to Comcast, the channel is now being shown on Channel 21, and also at position 915. *With* a converter on an analog TV, we could view the HOM-TV signal at

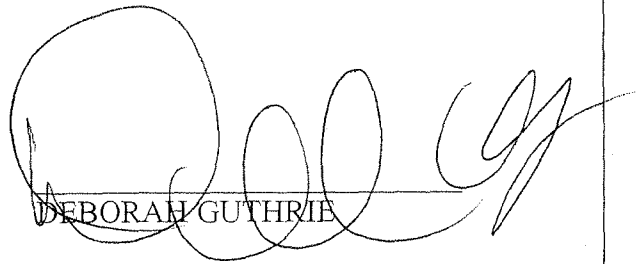
position 915. But *without* the converter on the QAM digital TV, there was no signal when we directed the TV to tune to 915, or any 900-series location. This is contrary to Comcast's claim. We could not "channel surf" from other basic channels (which we could receive) to the 900-series. At the very least, this indicates that unless a subscriber pays an extra amount to Comcast, the subscriber will find it very difficult to locate our programming and may find it impossible to receive.

10. We have received a number of complaints from citizens about the proposed change, and from other community institutions. The school district and students from the school district attested that the proposed move would harm ongoing academic programs that rely on the educational access channel in our community. We have been told that many public and educational programs depend on volunteer producers. When the channels are accessible to fewer people, program production will be discouraged, because volunteers will see less value to their participation.

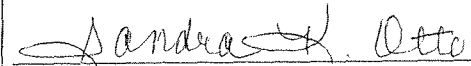
11. At least one customer has indicated to us that he was told that in order to obtain the PEG channels, he would have to subscribe to buy additional services, and could not just continue to purchase the basic service tier.

12. These complaints indicate that if Comcast is permitted to proceed with the planned change, the Township will be harmed as a programmer, and viewers will also be either deprived of information that is of great importance to them, or forced to pay significant additional fees. In addition, subscribers complain that in order to receive the channels, they will be required to schedule service appointments and go through the inconvenience of installation of a converter box.

Further, Affiant sayeth not.

  
DEBORAH GUTHRIE

Subscribed and sworn to before me  
this 10th day of January, 2008.

  
Notary Public

DET02\1222299.01

SANDRA K. OTTO  
NOTARY PUBLIC - STATE OF MICHIGAN  
COUNTY OF INGHAM  
My Commission Expires Oct. 1, 2010  
Acting in the County of Ingham

**EXHIBIT A, Attachment B**

Trade associations that represent local cable operators say Comcast might be violating a federal law that requires government channels to be included in basic cable packages. With public access channels moving to the 900s, only customers with digital cable will have access.

Politicians across the state are complaining, too.

City officials in Royal Oak and Sterling Heights passed resolutions condemning the channel moves, resolutions that are to be sent to Comcast and lawmakers in Lansing.

Comcast could be using Michigan as a test case. It is the first state where the company will move all its government and educational stations at once.

The company said the changes will standardize public access channel numbers throughout the state, making it easier for people to find locally produced programming.

"The timing of this effort reflects the overwhelming market adoption of digital services," Louise Beller, senior director of communications and public affairs for Comcast's Michigan region, wrote in an e-mail last week. It "enhances our ability to provide the additional services and features our customers want." But the Michigan chapter of the National Association of Telecommunications officers and Advisors disagrees.

Once the changes are in place Jan. 15, viewership is projected to plummet by 50% to 70%, said Jon Krucher, a Bloomfield Hills lawyer who represents the association, because customers will struggle to find their local access channels.

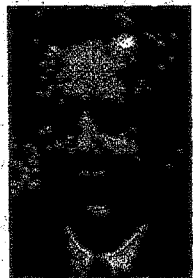
Contact **CHRISTY OYAMA-ARBOSCELLO** at 586-469-8085 or [carboscello@freepress.com](mailto:carboscello@freepress.com).  
Staff writers Christina Hall and Bill Laitner contributed to this report.

## Cable company limits access to local programming

By Tim Skubick

Admittedly picking on the cable TV industry is easy pickings. What other industry, with a straight face, can routinely tell its customers to wait at home for a month for the cable guy to show up?

Now comes the decision to hijack local access shows from the easy-to-find lower tiers of the remote box to the 900 range,



SKUBICK

the Siberia of cable programming. The industry may dismiss it as a mild irritant but it's really a violation of principle.

When cable was in its infancy, there was honest-to-goodness competition to secure a franchise.

Local officials demanded local channels to broadcast township meetings, school board sessions or an endless array of high school band concerts and football games.

The benefits were bountiful. Local residents could vicariously participate in the democracy without leaving home.

Normal folks could get their faces and their opinions on the local stations, too.

And there was a self-serving aspect as

**I bet all this is about maximizing profits. Exiling local access to the 900 range where nobody makes any money, frees up the popular lower tier for money to be made. And in some cases, for competitive reasons, those expensive local access studios are being mothballed as well.**

well. The politicians, who negotiated the local service, also got their persona in front of the electorate at no expense and at re-election time.

Cable companies gladly acquiesced to the demands because the municipalities had them over the barrel: No access channels meant no contract. They even tossed in expensive studios for residents to produce their shows.

It was an arranged marriage but it worked and everyone was happy. Democracy was served.

But then the industry changed. Tiny cable firms were cannibalized, resulting in a near monopoly-like landscape dominated by a mere handful of

conglomerates.

Enter one of those, Comcast, with its decision to relocate the local channels in Michigan, which may become a test case for the rest of the country. Local communities complain the decision was unilateral. Comcast counters it gave a 30-day notice and has even run public service announcements telling its 1.3 million users where to gripe.

"The channels aren't going away," the company said.

To calm the protests, Comcast said it will provide a free converter box so everyone can access the 900 range. But after one year, the monthly cost will jump to \$4.20 for the box.

Local officials figure some seniors on

fixed incomes, may be priced out of the market as a result.

There are whispers about lawsuits, and the state Legislature has been asked to get into the act to prevent this wholesale change starting Jan. 15, but lawmakers won't be involved in that.

It's just a guess, but I bet all this is about maximizing profits. Exiling local access to the 900 range where nobody makes any money, frees up the popular lower tier for money to be made. And in some cases, for competitive reasons, those expensive local access studios are being mothballed as well. If citizens want to play TV, they'll have to find other studios and pay for it. So much for contributing to the free flow of ideas.

In a complete turn of events, the companies now have the locals over the barrel. With little or no competition, local officials have little leverage as the changes are shoved down their throats.

Cable companies have a right to make money, but a principle is being trampled as they connive to fatten the bottom line. In the beginning, cable companies agreed to foster participation in our democracy.

So much for that.

Columnist Tim Skubick covers the state capital. His column appears weekly.



**From:** "Irving, Bill" <birving@ci.dearborn.mi.us>  
**To:** "Watza, Michael J." <mike.watza@kitch.com>, "Joseph Van Eaton" <jvaneato...  
**Date:** 1/13/2008 1:46 AM  
**Subject:** Grand Rapids Press editorial urges delay in PEG channel move

<[http://www.mlive.com/images/news/newslogo\\_grandrapids\\_l.gif](http://www.mlive.com/images/news/newslogo_grandrapids_l.gif)>

Comcast too quick

Saturday, January 12, 2008

Comcast Cable poorly handled the decision to change the channels for its public access, education and government (PEG) programming. That includes the rushed effective date -- it begins Tuesday after only 60 days' notice -- to the company's failure to consult with local government and school officials about the switch to the digital format.

Officials should delay the move, especially knowing that the change will mean an additional cost on those who currently don't have the equipment to view the new channels. The PEG channels serve significant civic participation purposes, allowing people to view city and school board meetings. Comcast has shown a lack of common courtesy to those it serves. The public deserves much better.

In November, Comcast -- Grand Rapids' largest cable provider -- announced the shift of community access channels from analog cable channels 24-28 to a digital format available on the 900-range channels. The commercial-free channels provide repeat telecasts of school and government meetings, including the City of Grand Rapids and Grand Rapids Board of Education, as well as other programming and events of interest to the public. Comcast says the move will enhance the quality of video and audio, and by grouping them together in a uniform fashion, viewers can find them no matter where they are in the state.

The change will also earn Comcast more money. Those who need to upgrade to a digital converter box for their TV will have to pay \$4.20 per month. Comcast has offered one free converter box per household for the first 12 months to help with the transition. But the company, which has 1.3 million customers statewide, won't say what percentage of its West Michigan customers is already using digital service. The switch also frees up channel space for Comcast.

Local officials in Grand Rapids and across the state have raised legitimate concerns about access and costs. Grand Rapids Mayor George Heartwell wrote Comcast that the realignment "placed local programming beyond the reach of seniors and low-income families who are most in need of the information." Comcast did not respond to his request to reconsider the change. So Tuesday's primary and meetings will now be on Channel 915, instead of 26.

U.S. Rep. John Dingell, D-Dearborn, who chairs the House Energy and Commerce Committee, wrote Comcast of his concerns. A congressional hearing is now planned for Jan. 29 to look at the evolving ways cable operators are offering PEG services and whether they're consistent with the Communications Act and Congress's intent. That will be helpful to the process.

Grand Rapids Schools officials have also been critical of Comcast and concerned about the impact on public participation and the district's bottom line. In some schools, the district has at least 20 televisions.

Had Comcast asked for feedback from GRPS and other community partners before sending out its notification letter, the company would have had the opportunity to understand some of their issues. More planning time, particularly for the GRPS, would have been helpful. The public could have also been better informed and educated.

That type of dialogue and consideration is essential to being a good corporate citizen. But the manner in which Comcast handled this -- sending out a notice right before the Thanksgiving to Christmas holiday

## **EXHIBIT B**

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

In the Matter of

Petitions for Declaratory Ruling Regarding  
Public, Educational, and Governmental  
Programming

CSR-8128  
MB Docket No. 09-13

Declaration of Leslie Helwig

I, Leslie Helwig, declare as follows:

1. I am Director of Community Relations for the Charter Township of Bloomfield, Michigan. In that position, I also serve as General Manager of Bloomfield Community Television (BCTV). I reside at 691 Telya Ridge, Milford, MI 48381. My telephone number is 248.909.1036.
  
2. I have been General Manager of BCTV since May, 1999. My responsibilities include managing a full-time professional production staff of four people, an office manager, and several part-time workers. BCTV has approximately 60 community producers, both individuals and non-profit groups. We have approximately fifteen production volunteers.

In addition to television production oversight, I am responsible for overseeing cable franchise matters. In this role, my staff and I pass on cable complaints (an average of 135 annually) from our residents to the cable/video providers (Comcast and AT&T) and monitor the providers' attempts to resolve them to the

subscriber's satisfaction. I also communicate with the providers in an effort to enforce provisions of our respective franchises.

3. I have reviewed and verified the factual statements in the Complaint against Comcast of Michigan III, Inc. with respect to Bloomfield Township (attached hereto as Exhibit 1) and I will not repeat those statements in this affidavit. Here, I will provide additional information about BCTV, some of the work we have performed and information we have received since the announcement that Comcast would cease providing the access channels at their current location, shift them to digital only, and identify PEG programming as being carried on what Comcast describes as the 900-series of channels on their cable system.
4. BCTV's community-based programming goes to 24,000 households in Bloomfield Township and Bloomfield Hills, and the neighboring communities of Birmingham, Beverly Hills, Bingham Farms and Franklin. The latter four communities receive our programming through a contractual agreement. With community producers and elected and appointed officials from the six municipalities, we produce approximately 500 original programs a year.

Over the past 20 years, BCTV has received many regional awards, several national awards, and even an **Emmy Award** for its programs. Topics for single programs and program series vary widely. A partial list includes:

- o public safety (copy of news coverage of the most recent public safety program is attached hereto as Exhibit 2),
- o general community needs (e.g., a wheelchair user emphasizing the importance of keeping handicap parking spaces clear for intended users),

- public works (e.g., maintenance and expense of water & sewer infrastructures),
- civic planning (e.g., a recently proposed tree preservation ordinance)
- community history (e.g., the move of an historic log cabin from one site to another),
- senior issues – exercise, health care, use of technology for seniors, etc.
- current affairs at both the global and local levels,
- candidate forums during election years,
- women business owners and community leaders,
- world religions and their unique perspectives on current affairs,
- symphony concerts, outdoor summer concerts, opera highlights,
- community parades and events, farmers' market.

Further, potential producers initiate new programming at a frequent rate – we initiate approximately 7-12 new programs or program series annually. While it takes a lot of time and effort to develop a program idea into a viable program, many community members recognize the value of this local medium and dedicate their own resources into this type of local communication.

In addition to the locally produced original programming described above, we also air programs produced by other governmental or non-profit agencies. We run programs from 8:00 AM – 11:00 PM six days a week and display local informational bulletin board messages overnight and on Saturdays. Our program schedule is printed and distributed weekly. An online program schedule is posted each week on the Township's website: <http://www.bloomfieldtp.org/Services/cable/ProgramSchedule.htm>.

5. Channel identity and accessibility are extremely important to us. In a world filled with clutter, it is important for us to be easily found and readily identified. Our promotional budget is very small, so we are dependent upon a stable channel location and quick, easy access on the lineup. Being pushed to a 900-tier, and away from local broadcast stations would be extremely harmful.

When Comcast first announced its plan to move us to the 900 tier, we received calls from residents who expressed frustration and even anger that they would be less likely to find the channel. Some already subscribed to digital so the cost or convenience of a converter box was not an issue, but they clearly stated that being moved away from the more commonly viewed channels would be a hindrance in their effort to watch local programming.

6. For the viewers who subscribe to analog-only packages, the move to digital was extremely frustrating because Comcast's stated plan to obtain converter boxes was prohibitively difficult and costly. Many residents reported that when they called to ask for a converter box, they were told there would be a charge, even though Comcast stated one box would be distributed at no charge to each household. Residents reported they had been told the monthly fee would be anywhere from \$2.99 - \$5.99 a month. Subscribers who had one digital TV along with other analog-only sets were told they would have to pay for their first box – there would be no free box if even one TV in the house was digital.

Actually obtaining the box, regardless of cost, was also a prohibitive ordeal. Some people were lucky enough to have one delivered and installed, at no charge, by Comcast service technicians. That, however, was the exception. Most people were told to drive to a service

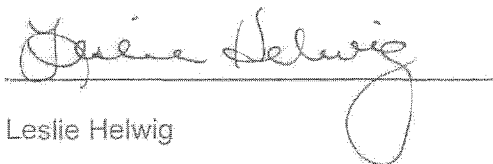
center in a different city to pick one up while supplies lasted. Then, they would have to figure out how to install it themselves, quite a feat for many people, especially seniors. If they wanted Comcast to deliver a box, the charge would be \$17.00.

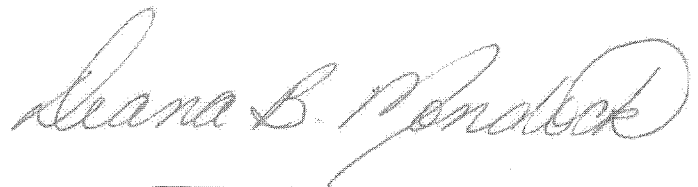
I was told by subscribers that when they called to request boxes, they first had to listen to the Comcast sales pitch to upgrade to digital. Some people decided it was in their best interest to do so, but others were offended and angered that they were pressured to spend more money when they were simply requesting a means of access to a basic service.

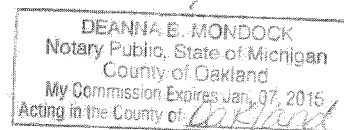
Based on these reactions, and our own experience, we concluded that because Comcast's plans created significant hurdles to watching PEG channels – either monetary or accessibility – that would result in loss of viewership to an important public asset.

7. Based on these reactions, and our own experience, we also concluded that because viewers will be less likely to watch programs that have unique local interest, producers – including individuals and non-profit organizations as well as schools and local governments – will lose a segment of their audience, and volunteers will lose a constructive outlet for their time and talent.

This declaration was executed on March 9, 2009 at the Charter Township of Bloomfield, Michigan.

  
Leslie Helwig





**EXHIBIT B, Exhibit 1**



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CITY OF DEARBORN, a Michigan municipal  
corporation, and CHARTER TOWNSHIP OF  
MERIDIAN, a Michigan municipal corporation,  
And SHARON GILLETTE, an individual

Plaintiffs,

Case No. 08-10156  
Hon. Victoria A. Roberts

V

COMCAST OF MICHIGAN III, INC., a  
Delaware corporation, and COMCAST OF  
THE SOUTH, INC., a Colorado corporation,

Defendants.

---

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**CHARTER TOWNSHIP OF BLOOMFIELD'S**  
**MOTION TO INTERVENE AS PLAINTIFF**

The Charter Township of Bloomfield, through its counsel, SECREST WARDLE, moves to intervene in this action seeking declaratory and injunctive relief, as a party Plaintiff, pursuant to FRCP 24(b), for the following reasons:

1. The current declaratory judgment action, *City of Dearborn et al v Comcast of Michigan et al*, seeks a declaration that Comcast of Michigan III, Inc., and Comcast of the South, Inc. (hereinafter "Defendants") would violate federal law upon their announced move of the Public, Educational and Government ("PEG") access channels from their current position on Defendants' cable television channel line up as part of the basic (analog) tier, requiring no additional equipment and no additional charge, to the 900 (digital) channel range, requiring additional equipment and at an additional expense to its basic service subscribers. Additionally, the action seeks a permanent injunction against the Defendants proposed movement of the PEG channels.

2. The Charter Township of Bloomfield (the "Township") is situated similarly to the current municipal Plaintiffs, in that the Township has a franchise agreement with Defendant Comcast of the South, Inc., that requires (1) that Comcast will comply with all applicable Federal laws (Section VIII.8.E.) and (2) that Comcast will provide three (3) channels for non-commercial public, education, and government access programming (Section XI.C.).

3. Similar to the municipal Plaintiffs, customers of Comcast residing in the Township received notice that their PEG channels would be moved to the 900 (digital) range, requiring additional equipment for many subscribers at an additional cost.

4. The claim of Bloomfield Township has questions of law and fact in common with the declaratory judgment action filed by the Plaintiffs against Defendants, currently pending before this Court.

5. The intervention of Bloomfield Township as party Plaintiff will not unduly delay or prejudice the adjudication of the rights of the original parties to the main action.

For these reasons, and because intervention will serve the interests of both justice and economy, the Charter Township of Bloomfield respectfully requests the Honorable Court enter an order permitting it to intervene in the action currently pending by Plaintiffs against Defendants. A proposed order is attached.

s/ WILLIAM P. HAMPTON (P14591)  
Secrest Wardle  
Attorney for Bloomfield Township  
30903 Northwestern Highway  
P.O. Box 3040  
Farmington Hills, MI 48333-3040  
(248) 851-9500

Dated: February 25, 2008

**BRIEF IN SUPPORT OF MOTION TO INTERVENE AS PLAINTIFF**

The important facts are stated in the body of the motion. In the pending case, the City of Dearborn and Meridian Township sought, and were granted, a temporary restraining order ("TRO") against Defendants' planned move of the PEG channels in all its communities from the "basic tier" as required by federal law, to the 900 (digital) channel range. Similar to the municipal Plaintiffs, Bloomfield Township has a significant interest in making sure its PEG channels are easily accessible by its residents. In addition to the free speech outlet for its residents, the PEG channels are also an important resource for getting community information to its residents, not only for the Township, but also for the local school districts. Additionally, the PEG channels are used to notify residents of weather and other community emergencies.

In the Township's proposed action for declaratory and injunctive relief, Bloomfield Township seeks an injunction against the proposed movements of PEG channels out of the basic (analog) tier to the 900 (digital) channel range, identical to the issue before this Court in *Dearborn v*

*Comcast*. Thus, our proposed claim has questions of law and fact in common with the main action already pending. FRCP 24(b). Because Comcast has not yet filed their answer to the initial complaint, no motions have been filed (aside from that seeking the TRO), and discovery has not yet commenced in the *Dearborn v Comcast* action, the addition of Bloomfield Township as an additional party Plaintiff will not unduly delay or prejudice the adjudication of the original parties. FRCP 24(b).

A proposed Complaint is attached to this Motion, as required by FRCP 24(3), and concurrence from the parties has been sought. Counsel for Defendants has declined to consent to the relief requested in this motion.

Intervention by Bloomfield Township will save the Court's resources, and minimize costs to the parties. It will ensure the most economical and consistent resolution of the questions common to this case. Therefore, the Charter Township of Bloomfield respectfully request this Honorable Grant grant its motion to intervene and add Bloomfield Township as a party Plaintiff.

s/ WILLIAM P. HAMPTON (P14591)

Secrest Wardle

Attorney for Bloomfield Township

30903 Northwestern Highway

P.O. Box 3040

Farmington Hills, MI 48333-3040

(248) 851-9500

Dated: February 25, 2008

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:  
Michael A. Watza, William H. Irving, Joseph L. Van Eaton, Michael S. Ashton and Mary Michaels.

s/WILLIAM P. HAMPTON (P14591)  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CITY OF DEARBORN, a Michigan municipal  
corporation, and CHARTER TOWNSHIP OF  
MERIDIAN, a Michigan municipal corporation,  
And SHARON GILLETTE, an individual

Plaintiffs,

Case No. 08-10156  
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COMCAST OF MICHIGAN III, INC., a  
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Farmington Hills, Michigan 48334  
(248) 851-9500  
[whampton@secrestwardle.com](mailto:whampton@secrestwardle.com)

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LIST OF EXHIBITS

- A. Complaint for Declaratory and Injunctive Relief
- B. Exhibit A - Franchise Agreement, Part 1
- C. Exhibit A – Franchise Agreement, Part 2
- D. Exhibit A – Franchise Agreement, Part 3
- E. Exhibit A – Franchise Agreement, Part 4
- F. Exhibit A – Franchise Agreement, Part 5
- G. Exhibit A – Franchise Agreement, Part 6
- H. Exhibit B - Code of Ordinances, Charter Township of Bloomfield
- I. Exhibit C - Defendant Letter to Leslie Helwig 11/15/07
- J. Exhibit D - Defendant Letter to Subscribers
- K. Exhibit E - NATOA Letter to Comcast Michigan Region
- L. Exhibit F - Resolution
- M. Exhibit G - News Release 12/21/07
- N. Exhibit H - Comcast Corporation Letter to Congressman Dingell 1/7/08

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CHARTER TOWNSHIP OF BLOOMFIELD,  
a Municipal corporation,

Plaintiff,

vs.

COMCAST OF THE SOUTH, INC., a  
Colorado corporation,

Defendant.

---

Case No. 08-10156

Hon. Victoria A. Roberts

WILLIAM P. HAMPTON (P14591)  
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whampton@secreswardle.com

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**A. JURISDICTION AND PARTIES**

1. Plaintiff Charter Township of Bloomfield("Township") is and was at all times mentioned below a municipal corporation and charter township created under the constitution and laws of the State of Michigan, with its primary place of business at 4200 Telegraph Road, Bloomfield Hills, MI 48303



2. Defendant Comcast of the South, Inc. (“Comcast South”) is a Colorado corporation, authorized to do business and operating a business in Michigan, with offices at 30600 Telegraph Road, Suite 2345, Bingham Farms, Michigan, 48025.

3. This is a civil action for declaratory and injunctive relief involving a dispute regarding channels for public, educational and government (“PEG”) use that Comcast is required to provide under its cable franchise with the Township. The value of those channels is in excess of Seventy-Five Thousand Dollars (\$75,000). Every issue of law and fact in this action is wholly between citizens of different states.

4. As further alleged below, Defendant intended to take actions on January 15, 2008 that violate the federal Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et seq. (the “Cable Act”) and associated regulations, including specifically, 47 U.S.C. §541; 47 U.S.C. § 543(b)(7); and 47 C.F.R. § 76.630 and 47 U.S.C. § 544a (c)(2)(B)(ii).

5. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. §§ 1331 and 1332.

#### **B. VENUE**

6. This civil action is brought in the United States District Court for the Eastern District of Michigan, where the claim arose, in accordance with 28 U.S.C. § 1391(a)(2).

#### **C. BACKGROUND**

7. In order to provide cable service to subscribers, cable operators must place wires and cabinets extensively under and over public rights-of-way owned or controlled by local governments.

8. Under state and federal law, cable operators require a franchise to use and occupy the rights of way to provide cable service. 47 U.S.C. § 541(b)(1).

9. In Michigan, franchises are issued by local governments. The Township is the cable franchising authority for operators providing service within the Township's boundaries.

10. Defendant holds a franchise issued by the Township to Comcast's predecessor in interest, MediaOne, in 1999. (**Exh. A** - Franchise Agreement).

*a. Cable franchising and PEG under federal law*

11. Federal law provides that, as one of the conditions of a franchise, localities may require an operator to designate channel capacity on its cable system for PEG access channel use. 47 U.S.C. § 531.

12. The legislative history to the Cable Act explains that those channels are intended, *inter alia*, to "provide groups and individuals who generally have not had access to the electronic media with the opportunity to become sources of information in the electronic marketplace of ideas. PEG channels also contribute to an informed citizenry by bringing local schools into the home, and by showing the public local government at work." H.Rep. No. 98-934, 98<sup>th</sup> Cong 2d Sess. at 30; 1984 U.S.C.C.A.N. 4655, 4667 (1984).

13. Given the local public interest importance of these channels under the Congressionally-established franchising scheme, the control of the channels is left to the locality, and not to the cable operator. 47 U.S.C. § 531(d)-(e); 47 U.S.C. § 541. An operator has no authority under the Cable Act to take any action to interfere with the delivery or availability of those channels. Defendant has no right to sell or bundle the channels as it sees fit, as it may do with respect to channels it has no duty to carry on its cable system.

The legislative history to 1992 amendments to the Cable Act explains that “PEG programming is delivered on channels set aside for community use in many cable systems, and these channels are available to all community members on a nondiscriminatory basis, usually without charge. PEG channels serve a substantial and compelling government interest in diversity, a free market of ideas, and an informed and well-educated citizenry. Because of the interests served by PEG channels, the Committee believes that it is appropriate that such channels be available to all cable subscribers on the basic service tier and at the lowest reasonable rate.” H.R. Rep. No. 102-628, 102nd Cong., 2nd Sess. 1992 at 85.

14. Based on the dual concerns of ensuring that basic services be available at reasonable rates, and that the channels be accessible to all, the House adopted language (included in the 1992 amendments) that “requires cable operators to offer a basic service tier, consisting, at a minimum, of all broadcast signals carried on the cable system and public, educational, and governmental (PEG) access channels.” *Id.* at 26-27.

15. The Cable Act thus requires a cable operator to provide the channels as part of the basic tier of service unless it has the express permission of the local franchising authority to do otherwise. 47 U.S.C. § 543(b)(7).

16. The basic service tier is the lowest level of service provided to all subscribers. A tier is defined in the Cable Act as “a category of cable services or other services and for which a separate rate is charged by the cable operator.” 47 U.S.C. § 522(17).

17. In addition, federal law and regulations require a cable operator to provide all channels on the basic service tier “in the clear.” The regulations are designed in part to prevent an operator from requiring subscribers to obtain unnecessary equipment. 47 C.F.R. § 76.630 and 47 U.S.C. § 544a (c)(2)(B)(ii).

18. Accordingly, Defendant and its affiliated companies operating elsewhere in Michigan and across the country have traditionally provided PEG channels as part of the basic service tiers, and in a manner such that there is no special charge, expense or equipment required to receive them.

***b. PEG Channels in the Township and Dearborn***

19. The same is true in the Township.

20. Under its franchise with the Township, Defendant is required to provide at least three PEG channels on the basic service tier, with an option for an additional channel at the request of the Township. Franchise, pp. 10-13.

21. In addition, the Township Code requires Defendant to comply with federal law and FCC regulations applicable to the carriage of the channels. Bloomfield Township Code of Ordinances § 43-79 (**Exh. B** -Code of Ordinances, Charter Township of Bloomfield).

22. The Township actively programs the government channel, Channel 15, which includes programs about the community.

23. The PEG channel requirements contained in Bloomfield Township's franchise with Defendant and the Township's Code of Ordinances for compliance with federal laws and regulations related to those channels, are fully enforceable as those requirements are consistent with the Michigan Act and with federal laws and regulations with which Defendant must comply. MCL 484.3305

***c. Defendant's proposed actions***

24. Defendant complied with its obligations under the franchise, and corresponding obligations under federal law, by designating Channels 15 and 16 for PEG Channels for the Township.

25. These channels were provided as part of the basic service tier, and are receivable in the same way standard broadcast channels and Defendant's own local programming service are receivable by subscribers. No extra equipment has been required to receive the PEG channels, similar to other channels carried on the basic service tier. There is not and has never been an additional charge to view the PEG channels.

26. Some channels on the cable system can only be received if the subscriber leases a converter box. For example, a "premium" service, such as HBO, can only be viewed if a subscriber has a converter box. Comcast's interactive programming guide and many of its digital services can only be used if a subscriber leases a box from Comcast, at a substantial additional monthly charge per television set.

27. The converter boxes may interfere with a subscriber's ability to use various functions of the subscriber's television set, or other consumer electronic equipment.

28. A separate box is required for each set where the subscriber wishes to receive service, and there is a corresponding increase in the monthly charges owed to Defendant for the boxes.

29. By contrast, standard broadcast channels and PEG channels carried on the basic service tier have traditionally been viewable by subscribers without the expense or inconvenience of renting a converter box.

30. On information and belief, approximately forty (40%) percent of Defendant's subscribers in Michigan receive service without a converter. On information and belief, that equates to approximately 500,000 of Defendant's customers that would be directly affected by the proposed change.

31. On or about November 15, 2007, Defendant advised the Township that on January 15, 2008, it intended to carry the PEG channels now being provided in the Township only on what it calls "channels" 902 and 915 and to provide those "channels" only in a digital format. (**Exh. C** - Defendant Letter to Leslie Helwig dated November 15, 2007, attaching **Exh. D** - Defendant Letter to Subscribers). The subscriber notice advised Defendant's customers that they could only continue to receive PEG programming "by acquiring a digital converter, digital service, or compatible equipment."

32. Defendant and its affiliated companies proposed to take similar action everywhere in Michigan. In other parts of the country, Defendant or its affiliated companies are continuing to provide PEG channels as they have in the past - - as part of the basic service tier, broadcast in an analog format, with no additional equipment required.

33. As a result of the proposed change, the PEG channels will no longer be part of the basic service tier, as required by the Franchise and by federal law.

34. Among other things, many subscribers who now receive basic service without a converter box will need to obtain a converter box for each television set in their home in order to view the PEG channels.

35. A converter box will still not be required to receive standard broadcast channels on the basic service tier, or other basic service channels such as TBS.

36. The impact of the change is particularly significant for subscribers who cannot afford to purchase anything but the basic service tier, and for entities like schools, which cablecast the PEG channels to many different classrooms for instructional purposes. A converter will be required in each classroom at an additional cost to the school districts in order for the PEG channels to be viewed with traditional television equipment.

37. Moreover, the PEG channels will no longer be as easily accessible either through the standard program guide or by “channel surfing.” This is particularly important as PEG programmers do not have the same financial resources as traditional broadcasters to advertise the content of the programming being carried at any particular time.

38. As a result, what is now a single, basic tier that includes standard broadcast channels and PEG channels will be split into two tiers: one consisting of channels that can be received on any cable-ready television set without additional expense beyond the basic service fee, and easily accessible to all; and a second including only the PEG channels, available only if an additional equipment fee is paid, and additional equipment obtained, as a result, inaccessible to many customers.

39. Defendant is required to provide accurate notice to subscribers of the proposed change in channel location to subscribers at least thirty days prior to the change under the FCC’s minimum customer service standards, 47 C.F.R. § 76.309(c)(3)(i)(B). Under FCC rules, the Township is responsible for enforcing the regulation. The notice provided to subscribers was deficient. Among other things, it did not completely or accurately identify the channel numbers for the PEG programming, and as a result it may be difficult if not impossible for some subscribers to even find the PEG channels.

*d. The response to the proposed action.*

40. The Township, as the franchising authority, is the entity primarily responsible for ensuring franchise compliance.

41. Municipalities took immediate action to notify Defendants that they objected to the planned changes, including an objection on behalf of the National Association of

Telecommunication Officers and Advisors (NATOA), Michigan Chapter. (**Exh. E** - NATOA Letter to Comcast Michigan Region with Attached Comcast Michigan Region's Response).

42. The Township adopted a resolution opposing such movement of the PEG Channels out of the basic service tier. (**Exh. F**- Resolution).

43. At the request of several communities in southeastern Michigan, led by the City of Dearborn, U.S. Rep. John D. Dingell of Dearborn, Chairman of the House Committee on Energy and Commerce, and, one of the drafters of the Cable Act and its amendments, likewise notified Comcast that the proposed action was inconsistent with the Act and gave the company until January 7, 2008 to take steps to protect the public. (**Exh. G**- News Release dated December 21, 2007).

44. Comcast Corporation responded with a January 7, 2008 letter stating that they intended to proceed as planned. (**Exh. H** - Comcast Corporation Letter to Congressman Dingell, dated January 7, 2008).

45. Defendants have nonetheless persisted in their course, and unless prevented from doing so, are expected to move the PEG channels as described above on January 15, 2008.

*e. The effect of the action.*

46. Residents of Bloomfield Township who are customers of Defendant will now have to pay more in order to continue to receive the PEG channels, and the PEG channels will be less accessible to them. The actions described above harm those residents, who have an interest in viewing the programming as part of basic service, and without obtaining additional equipment, or paying additional expenses. As a result of the actions described above, viewers will be immediately, irreparably, substantially and adversely affected.



47. The utility of the PEG channels as a means of communicating important community information by the Township to its residents, will be immediately, irreparably, substantially, and adversely affected.

48. The proposed change over the objection of the Township is inconsistent with purposes for which the channels were to be set aside under the Cable Act – including making the channels available as a basic outlet for community information.

49. In addition, the actions described above harm the Township as speakers who use the channels to communicate, and as viewers who receive such programming.

50. The proposed change will alter the long-standing treatment of PEG channels as part of the basic service tier in the Township and elsewhere.

51. The loss of easy, low cost access to the PEG channels means that the Township will lose vital opportunities to communicate with the public, and viewers will lose access to important community information. In addition, the loss of access viewers will immediately affect the educational opportunities of local students, and that loss can never be restored. These losses are irreparable.

52. Those particularly affected will be the poor, the elderly and others who can only afford to obtain the most basic cable service level. These are also groups who may heavily depend on the Township's services, and the Township has a particular interest in being able to reach these groups via the cable system.

53. Maintaining the PEG Channels on the basic service tier will serve the public by maintaining access to vital public information, by ensuring subscribers are not unjustly charged for equipment that is not necessary to receive PEG channels, and by avoiding the burden required to obtain and configure a box for each television.

54. There is no significant harm to Defendant from maintaining the status quo, as Defendant or its parent and affiliated companies continues to provide the PEG channels as part of the basic service tier in most of the country.

**D. FIRST CLAIM FOR RELIEF**

(Violation of Cable Act and Associated Regulations)

55. Plaintiff realleges and incorporates by reference each of the allegations set forth in all of the previous paragraphs in this Complaint.

56. Defendant is required to comply with federal laws and regulations directly by virtue of the federal law, and as a condition of its franchise and State law.

57. Defendant intends to provide the PEG channels on a segregated and discriminatory basis as compared to other standard broadcast channels on the basic service tier, and in a manner that will decrease their viewership and accessibility, and that will require many subscribers who wish to view PEG channels to incur additional cost and expense, and to obtain additional equipment that may interfere with the use of other consumer electronic equipment.

58. Defendant has no authority under the federal Cable Act to sell or otherwise impose any charge for the PEG channels, which it neither controls nor operates.

59. Defendant's actions violate the federal Cable Act and associated regulations, as further detailed in this Complaint.

60. Defendant's actions violate its obligations to provide PEG channels to subscribers under 47 U.S.C. §§531 and 541, and amount to an unlawful exercise of control over the sale of those channels.

61. Defendant's actions violate its obligation to provide the PEG channels as part of the basic service tier under 47 U.S.C. § 543(b)(7).

62. Defendant's actions violate its obligation to ensure that all basic service channels are available without the need for additional equipment, as required by 47 C.F.R. § 76.630 and 47 U.S.C. § 544a.

63. Defendant's action violates its obligation to provide proper notice to subscribers under the FCC's minimum customer service standards. 47 C.F.R. § 76.309.

#### **E. SECOND CLAIM FOR RELIEF**

(Violation of Franchises and Code of Ordinances)

64. Plaintiff realleges and incorporates by reference each of the allegations set forth in all of the previous paragraphs in this Complaint.

65. The actions above violate the obligations of Defendant under its Franchise with the Township, and the failures to comply with federal laws and regulations violate the obligations of Defendant under its Code of Ordinances and Franchises with Township.

#### **PRAYER FOR RELIEF**

A. A declaration that Defendant's actions violate the Federal Cable Act and associated regulations.

B. A declaration that Defendant's actions violate the Franchises issued by the Township.

C. A permanent injunction prohibiting Defendant from providing the PEG channels on any tier other than the basic service tier without the express permission of the Township.

D. A permanent injunction prohibiting Defendant from providing PEG channels on a discriminatory basis compared to standard broadcast channels, or relocating the channels from their current locations without the permission of the Township.

- E. Costs and reasonable attorneys fees as permitted by law; and
- F. Such other relief as the Court may find appropriate.

s/WILLIAM P. HAMPTON (P14591)

Secrest Wardle

Attorney for Bloomfield Township

30903 Northwestern Highway

P.O. Box 3040

Farmington Hills, MI 48333-3040

248-851-9500

Dated: February 25, 2008

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**EXHIBIT B, Exhibit 2**

# Coyotes star in township video

BY GREG KOWALSKI

ECCENTRIC STAFF WRITER

2-19-09

The best way to get rid of coyotes is to make them feel unwelcome.

That's the message being delivered by Bloomfield Township Police Officer Pete Matejcik in a video he has written and produced in cooperation with Bloomfield Community TV.

Matejcik said he got the idea for the video in the wake of some media reports of coyotes roaming the hills of the Bloomfields.

"There were a few rather sensational articles on coyotes," he said. "They made it sound like the coyotes are a threat to humans."

In fact, coyotes are fairly harmless, although they will snack on a pet pooch if given the opportunity. And that is the core of the problem.

"People feed coyotes intentionally or unintentionally," Matejcik said. Some people overfill the backyard bird feeder, causing seeds to fall on the ground. They attract rodents, which in turn attracts coyotes that feed on them.

Deny coyotes a source of food and they will move on. "Hunting is not necessary," Matejcik said. "Hunting does not work." Coyotes are



Coyotes are the subject of a video produced by Bloomfield Township Police Officer Pete Matejcik.

remarkably adaptive and when pressure is placed on their population they will produce bigger litters to help ensure some will survive.

Matejcik interviewed Dan Badgley, manager of the E.L. Johnson Nature Center, in the production of the video, which will be shown at 3 p.m. today, Thursday, Feb. 19, on Channel 15 in Bloomfield Township. It will be repeated at 9 p.m. Friday, Feb. 20, and 8 p.m. Sunday, Feb. 22.

Matejcik said he is working with the township to have the video placed on the township's Web site. Information about coyotes is already there at [www.bloomfieldwp.org/Services/Police/Coyotes.htm](http://www.bloomfieldwp.org/Services/Police/Coyotes.htm).

## **EXHIBIT C**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CHARTER TOWNSHIP OF MERIDIAN,  
a Municipal corporation, and  
CITY OF DEARBORN,  
a Municipal corporation, and  
SHARON GILLETTE,  
an individual,

Case No.: \_\_\_\_\_

Hon. \_\_\_\_\_  
Magistrate \_\_\_\_\_

Plaintiffs,

vs.

COMCAST OF MICHIGAN III, INC.,  
a Delaware corporation, and  
COMCAST OF THE SOUTH, INC.,  
a Colorado Corporation,

Defendants.

MICHAEL J. WATZA (P38726)  
CHERYL VERRAN (P71237)  
Counsel for Plaintiffs  
Kitch Drutchas Wagner Valitutti & Sherbrook  
One Woodward Ave., 24th Floor  
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(313) 965-7986  
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WILLIAM H. IRVING (P39174)  
Corporate Counsel  
City of Dearborn  
13615 Michigan Avenue  
Dearborn, MI 48126-3586  
(313) 943-2035  
[birving@ci.dearborn.mi.us](mailto:birving@ci.dearborn.mi.us)

**AFFIDAVIT OF SHARON GILLETTE**

STATE OF MICHIGAN     )  
                                  )SS



COUNTY OF INGHAM )

I, SHARON GILLETTE, being first duly sworn, depose and state that:


1. I am a 20 year resident of 1375 Haslett Road, Haslett, MI.
2. I have been employed as a Realtor at Remax for 12 years;
3. I am a basic cable subscriber of Comcast or its predecessors since at least 2000 and my monthly cable bill averages \$17.00 - \$18.00.
4. I have no digital converter box and choose not to spend additional money to purchase one.
5. I called Comcast January 9, 2008 to inquire about obtaining a digital converter so I could continue receiving PEG channels on and after January 15, 2008. I was told I would need to rent a converter box for each of my 3 televisions at a cost of \$4.20 per converter, per month. I was also told an installation charge of \$34.95 would be charged.
6. I watch ABC, NBC, CBS, WKAR, HOM-TV, Meridian Twp. Government and the Haslett School channels.
7. My grandchildren attend school in the Haslett School District and I watch their events on television, as well as in person.
8. Government Access channels are very important to me and are used by me to monitor township meetings. I am always impressed with the amount of and importance of the decision making process by local government and believe residents should and do use HOM-TV to monitor local government activity including elections. Moving the PEG channels to the digital tier will terminate my ability to watch PEG channels, as well as others in the community.

9. The increase in channels by Comcast would create a greater risk of inappropriate programming (scrambled or not).

Further, Affiant sayeth not.

  
SHARON GILLETTE

Subscribed and sworn to before me  
this 10th day of January, 2008.

  
Notary Public  
SANDRA K. OTTO  
NOTARY PUBLIC - STATE OF MICHIGAN  
COUNTY OF INGHAM  
My Commission Expires Oct. 1/2010  
Acting in the County of Ingham

## **EXHIBIT D**

Declaration of John B. O'Reilly, Jr.

I, John B. O'Reilly, Jr., declare as follows:

1. I am Mayor of the City of Dearborn, Michigan. Dearborn is located in southeast Michigan, is a suburb of Detroit, and has a population of 97,775 as of the 2000 census. I have been Mayor since February 27, 2007. Prior to my election as Mayor, I served as president of the Dearborn City Council for 17 years.
2. Cable television came to Dearborn over twenty five years ago. My father, John B. O'Reilly, Sr., was Mayor at the time, and appointed a blue ribbon commission to prepare the request for proposals that was used to determine which company should be offered the City's first cable franchise. The competing cable providers at that time touted the unique community benefits that could only be offered by cable television. The great promise of cable was local programming, specific to each community. It offered a locally-based product that had never been offered before, and which no other medium could provide. The cable franchise was viewed as a unique partnership between the cable provider and the City. The cable provider would be granted access to and use of the public rights of way, while the City would receive benefits including communications tools known as PEG channels. Basic service customers would receive local broadcast stations along with community-based PEG channels. Once cable television was launched, diverse programming thrived. Schools, a community college, and service clubs all began producing original local programming. One example

of a local success is "Bible Time Quiz," a show in which young people of all faiths are tested on their knowledge of the Bible. The show has thrived on local cable for over twenty years and continues to be popular.

3. When the first channel line up was established on that first cable system, PEG channels were given channel numbers in prime locations, directly adjacent to the broadcast channels. Basic cable was sold as a product that would provide both broadcast channels and PEG channels in one package. Dearborn currently has six PEG channels on the Comcast system, all of which continue to be located near the broadcasters. The channels include typical city, school, and public access channels, along with a community college channel and public access in Arabic, which serves Dearborn's large Arab-American population. Dearborn's franchise agreement requires that channel locations be at the mutual consent of the City and Comcast.
4. The City of Dearborn operates a government access channel, CDTV. Since its inception in the early 1980s, CDTV has won numerous regional and national programming awards. The channel is part of the Department of Public Information, and has a full time professional production staff of two people, and more than a dozen part-time employees. The City's commitment to CDTV is shown by the fact that it dedicates 80% of its cable franchise fees to video production at CDTV.
5. Through its Department of Law, the City is also responsible for cable franchise administration. In this role, staff from the Law Department receive and act on cable complaints from our residents concerning the cable

providers (Comcast, WOW! Internet, Cable and Phone, and AT&T). The City then monitors the providers' attempts to resolve the complaints. The City also enforces provisions of the franchises through direct communications with the providers. Since the inception of cable television in Dearborn more than 25 years ago, the City has taken resident complaints and pursued resolutions of the complaints. Complaints of poor customer service against Media One, a predecessor to the Comcast franchise, were so numerous in 1999 that the City took the drastic step of issuing notices of violation of the franchise. In response to the notices, Media One took action to improve customer service. Thus, the role of local franchise enforcement is vitally important to ensuring good customer service at the local level. That is one of the primary goals of the City – to deliver superior service to the public. It is why the City continues to solicit and receive complaints about cable providers, even though a recent state law, Public Act 480 of 2006, purported to eliminate local oversight of cable providers and instead provided for state review of consumer complaints.

6. I have reviewed and verified the factual statements in the Complaint against Comcast Cablevision of the South, Inc. with respect to the City of Dearborn and I will not repeat those statements in this affidavit. I will, however, provide additional information about CDTV, some of the work performed by the City and information the City has received since the announcement that Comcast would cease providing the access channels at their current locations and shift them to digital.

7. CDTV's community-based programming goes to approximately 22,500 households in Dearborn, 15,000 of whom are Comcast customers and 7,500 of whom are WOW customers. CDTV's current monthly program production includes: 2 City Council meetings, 10 regularly produced programs and 5 public service announcements. CDTV also produces several special programs throughout the year, including community events such as the annual Ice Show, Youth Theater productions, the Memorial Day Parade, Mayor's Arts Awards and Youth Symphony performances. CDTV provides local election results as soon as they are released on election night. The status of local road projects is regularly updated on CDTV. More importantly, the City uses CDTV to transmit emergency information, such as snow emergencies or information about flooding. Residents are directed to tune to CDTV for information if the City-wide emergency warning sirens are activated.
8. CDTV's channel identity and easy accessibility are extremely important to the City. In an increasingly crowded channel line-up, it is important for CDTV to be easily found and identified. Historically, this has been done by keeping access channels close to the "must carry" broadcast channels. If PEG channels were to be moved to the 900 level, as Comcast proposed, many residents would experience great difficulty locating and viewing them, if they were able to do so at all. This, because the channels would be located far from their traditional locations near the broadcast channels — where residents are accustomed to finding them. Residents without

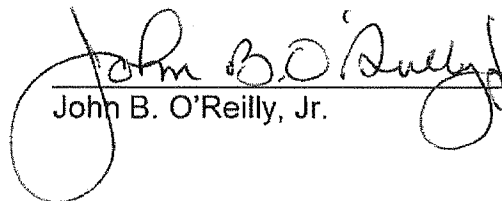
converters or digital sets would lose access altogether. Comcast has told the City that up to one third of Dearborn subscribers do not have digital service, and thus do not have converters. This 33% reduction in viewership would be harmful to the City's efforts to reach as many residents as possible.

9. After Comcast announced its plan in 2007 to move PEG channels to the 900 level, Dearborn residents called the City to complain about the proposal. Many residents were concerned that they would have to pay more in the form of converter box rentals, just to watch PEG programming. The City was especially concerned about the impact of these higher prices on senior citizens and low income residents, who would either pay higher rates if they obtained converter boxes or be paying the same rates for fewer channels if they did not obtain the boxes. The City also had grave concerns about the ability of residents to find CDTV in emergency situations. Additionally, Comcast's plan failed to take into account schools that use their PEG channel(s) for educational purposes. Many schools have television sets in every classroom, and use their PEG channel for internal educational purposes. Comcast would require cash-strapped school districts to rent converters for every analog television set they own or invest in a system that could forward the signal from fewer boxes to multiple sets, thus incurring further expense while reducing access to multiple channels school wide.



10. Comcast did offer to provide a free box to basic customers upon request for one year. Perhaps not surprisingly, the City received notice on December 21, 2007 that Comcast was increasing the cost of limited basic service by 25%, from \$12.00 per month to \$14.99 per month. Additionally, the cost of "preferred basic" increased from \$46.49 to \$49.49. We believe that these price increases were intended to pay for the "free" boxes.
11. When Comcast's plan was announced, confusion was the order of the day. Although Comcast said the free box would be installed for free, some customers were charged an installation fee. Some residents who called to obtain a converter were often subjected to a sales pitch about adding digital services. Comcast later testified in federal court and in Congress that they had not done a good job of announcing and implementing the plan.
12. PEG channels need to remain accessible to all subscribers and at the most reasonable price possible. Comcast's proposal would result in fewer PEG viewers and higher costs to subscribers. In a very real sense, PEG channels belong to all the subscribers and as such must be readily accessible near the broadcast channels and in a format that is viewable by all subscribers.

Further, Affiant sayeth not.

  
John B. O'Reilly, Jr.

Dated: March 5, 2009

## **EXHIBIT E**

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

In the Matter of:

City of Dearborn, MI. et al.

CSR-8128

MB Docket No. 09-13

**DECLARATION OF WILLIAM C. MATHEWSON**

I, William C. Mathewson, declare as follows:

1. I submit this declaration under penalty of perjury in response to the notice issued in the above-captioned proceeding.

2. I am General Counsel of the Michigan Municipal League. Michigan Municipal League (MML) is a statewide, not-for-profit, nonpartisan association which represents more than 500 Michigan municipalities. My office is at 1675 Green Road, Ann Arbor MI, 48105. My telephone number is (734)-662-3246. As General Counsel, I am responsible for corporate legal matters within the organization, and represent the MML in legal matters and policy issues relevant to municipalities throughout Michigan. I serve as Secretary-Treasurer of the Michigan Association of Municipal Attorneys (MAMA). I am also the Fund Administrator of the MML Legal Defense Fund, which provides appellate level amicus assistance to municipalities involved in litigation of statewide importance.

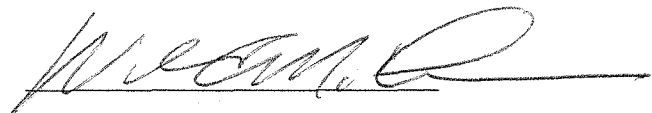
3. Because of my positions with the MML, MAMA and the MML Legal Defense Fund, I am often called by communities that face new and significant challenges. Shortly after Comcast announced in November, 2007, that it was planning on converting PEG channels, MML began receiving complaints and calls from municipalities across Michigan. There was concern that the proposed change would harm consumers by effectively imposing a surcharge on those

who wanted to view PEG channels. Communities were concerned that it would become more difficult to convey important public information to as many people as possible. Given the financial situation in Michigan, it is extremely important to communities that they are able to communicate, and the public is able to receive educational and governmental information as easily and cheaply as possible.

4. The issue was and continues to be an important issue across the state. While my efforts have been focused on Comcast, the problems extend beyond Comcast systems, because I understand that other operators such as Charter also planned to make similar changes. Michigan cities met with companies and attempted to develop a solution that could protect the PEG channels and consumers, while responding to the concerns that led operators to propose the change. However, no solution was reached. In meetings in which I was involved, communities recognized that operators who converted all other basic channels to digital would and could convert PEG channels to digital. The concern was the special burden placed on the use and viewership of the channels, and that was not fully addressed, in the view of many communities in Michigan.

9. I declare under penalty of perjury that the foregoing is true and correct.

This declaration was executed on the 9<sup>th</sup> day of March, 2009, in the City of Ann Arbor, Michigan.

A handwritten signature in dark ink, appearing to read 'W. Matheuson', with a long horizontal line extending to the right.

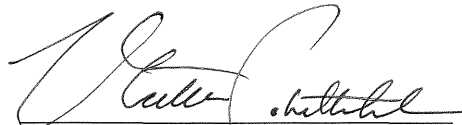
WILLIAM C. MATHEWSON

CERTIFICATE OF SERVICE

I hereby certify that I have, on this 9th day of March 2009, caused a true and correct copy of the foregoing Comments to be served on the following individuals via first-class U.S. mail, postage prepaid:

James N. Horwood  
Spiegel & McDiarmid  
1333 New Hampshire Avenue, N.W.  
Washington, DC 20036

Teresa S. Decker  
Varnum  
Bridgewater Place  
P.O. Box 352  
Grand Rapids, MI 49501-0352

  
Matthew K. Schettenhelm